HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.CHANDRAIAH

W.A.No.1861 of 2003

Between

The Chairman, Vishakhapatnam Port Trust, Vishakhapatnam and another ..Appellants

AND

A.Madhusudhan ..Respondent

:: JUDGMENT ::

Counsel for the appellants	Ms.V.Uma Devi for Sri K.Srinivasa Murthy
Counsel for respondent	Sri Sreedhar Reddy for Sri K.Raghuveer Reddy

18.12.2006

Per G.S.Singhvi, CJ

Whether the respondent, who was found guilty of committing misconduct in the enquiry held by the competent authority of the Board of Trustees (for short, 'the Board') of Vishakhapatnam Port Trust (hereinafter referred to as 'VPT' for the sake of brevity) and was punished, is entitled to full salary for the period of suspension, is the question which arises for determination in this appeal filed against order dated 25-10-2002 passed by the learned Single Judge in Writ Petition No.15974 of 1991.

The facts on which there is no dispute between the parties, are as under:

1) The respondent joined the service of VPT as Clerk in the year 1969. He was promoted as Junior Assistant in the year 1978. While he was working as Junior Assistant, an enquiry was instituted against him on the allegation that he availed the benefit of Leave Travel Concession (LTC) without actually undertaking the journey. He was placed under suspension vide order dated 6-2-1988 and was charge sheeted. After one year and three months, his suspension was revoked vide order dated 11-5-1989.

2) The enquiry officer submitted report dated 21-4-1990 with the finding that the charge levelled against the delinquent has been proved. The Chief Engineer, VPT-cum-Disciplinary Authority (appellant No.2 herein) issued show cause notice dated 6-6-1990 to the respondent proposing to impose penalty of reduction to the post of Clerk in the time-scale of Rs.1165-1935. After considering the reply of the

respondent, appellant No.2 passed order dated 31-7-1990, whereby he confirmed the proposed penalty.

3) The appeal preferred by the respondent was partly allowed by the Chairman-cum-Appellate Authority, VPT (appellant No.1 herein) vide order dated 20-6-1991. Appellant No.1 held that even though the charge has been proved against the delinquent, a lenient view deserves to be taken. Accordingly, he directed that the punishment imposed on the delinquent shall remain effective for one year and he shall be treated senior-most in the lower post.

4) As a sequel to the order passed by appellant No.1, appellant No.2 passed order dated 21.10.1991, vide which the period of suspension of the respondent from 6.2.1988 to 11.5.1989 was treated as 'on duty' for all purposes except for the purpose of full pay and allowances and the subsistence allowance paid during the period of suspension was treated as proportionate pay and allowances.

The respondent challenged the legality of orders dated 31-7-1990, 20-6-1991 and 21-10-1991 in Writ Petition No.15974 of 1991 by contending that the proceedings held against him are vitiated due to violation of the rules of natural justice and that the punishment imposed on him was not only harsh, but was also discriminatory. He averred that in similar cases, punishment of stoppage of increments had been imposed on the employees who had taken the benefit of Leave Travel Concession without availing the same, but, in his case, major penalty of reduction in rank had been imposed without any rhyme or reason. He also pleaded that denial of salary to him for the period of suspension was totally unjustified and the management was

acting against him for extraneous reasons.

The learned Single Judge quashed order dated 21.10.1991 by observing that when the disciplinary authority has decided to treat the period of suspension as spent on duty, there was no justification to withhold salary for the said period.

We have heard Ms.V.Uma Devi, learned counsel for the appellants and Sri Sreedhar Reddy, learned counsel for the respondent and perused the record.

Admittedly, the service conditions of the employees of VPT are governed by the provisions contained in Chapter III of the Major Port Trusts Act, 1963 (for short, 'the Act') and the regulations framed by the Central Government and the Board. Section 28 of the Act empowers the Board to make regulations on the subjects specified in Clauses (a) to (e). Section 126 empowers the Central Government to make the first regulations. For the sake of convenient reference, these sections are reproduced below:

"**28. Power to make regulations:--**

A Board may make regulations, not inconsistent with this Act, to provide for any one or more of the following matters, namely:-

a) the appointment, promotion, suspension, (reduction in rank, compulsory retirement,) removal and dismissal of its employees;

b) their leave, leave allowances, pensions, gratuities, compassionate allowances and travelling allowances and the establishment and maintenance of a Provident Fund or any other fund for their welfare;

c) the terms and conditions of service of persons who become employees of the Board under clause (f) of subsection (1) of Section 29.

d) the time and manner in which appeals may be preferred under sub section (2)of Section 25 and the procedure for deciding such appeals;

e) any other matter which is incidental to, or necessary for, the purpose of regulating the appointment and conditions of service of the employees.

126. Power of Central Government to make first regulations.--

Notwithstanding anything contained in this Act, the first regulations under this Act shall be made by the Central Government and shall have effect on being published in the Official Gazette."

In exercise of the powers conferred upon it by Section 126 read with Sections 28 and 134 of the Act, the Central Government made the first regulations which are titled as 'The Major Port Trusts (Adaptation of Rules) Regulations, 1964 (for short, 'the 1964 Regulations'). Regulation 4 by virtue of which the existing rules were continued, read as under:

"**4. Existing Rules to Continue:**

Existing rules and orders and subsequent amendments made by the Central Government from the time to time relating to the following matters shall, to the extent they are not inconsistent with the provisions of the Act 11 or any regulations made thereunder continue in force namely:

i) matters specified in clauses (b), (c) and (e)of section 28 of the Act.

ii) Mattes specified in clause (b)and clauses (c) to (n) of section 123 of the Act.

Provided that the amendment aforesaid shall not be applied unless the Board obtains the approval of the Central Government."

After framing of the 1964 Regulations, the Board of VPT, in its meeting held on 22-11-1967, resolved to recommend amendment of Regulation 4 so as to make the provisions of the Fundamental Rules, Supplementary Rules, Civil Service Regulations, General Financial

Rules, Treasury Rules, State Railway Provident Fund Rules, Contributory Provident Fund Rules etc. applicable to its establishment. The proposed amendment was approved by the Central Government. Thereafter, the same was notified in Andhra Pradesh Gazette dated 15-2-1968. By virtue of this amendment, the provisions of the Fundamental Rules (FRs) automatically became applicable to the employees of VPT. Rule 54B of the Fundamental Rules, which provide for treatment to be meted for the period of suspension of an employee who is reinstated or would have been so reinstated, but for his retirement, including premature retirement, reads thus:

> "**54B**. (1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement (including premature retirement) while under suspension, the authority competent to order reinstatement shall consider and make a specific order—
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> a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement (including premature retirement), as the case may be; and
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> b) whether or not the said period shall be treated as a period spent on duty.
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> 2) Notwithstanding anything contained in Rule 53, where a Government servant under suspension dies before the disciplinary or the Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.
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> 3) Where the authority competent to order reinstatement is of

the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub rule (8) be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant, it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay only such amount (not being the whole)of such pay and allowances as it may determine.

4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty fro all purposes.

5) In cases other than those falling under sub rules (2) and (3) the Government servant shall, subject to the provisions of sub rules (8) and (9) be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

6) Where suspension is revoked pending finalisation of the disciplinary or the Court proceedings, any order passed under sub-rule (1) before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub rule (1) who shall make an order according to the provisions of sub rule (3) or sub rule (5), as the case may be.

7) In a case falling under sub rule (5), the period of suspension shall not be treated as a period spent on duty unless the competent authority specifically directs that it shall be so treated for any specified purpose.

Provided that, if the Government servant so desires such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant."

In exercise of the power vested in it under Section 28 of the Act, the Board of VPT framed the Visakhapatnam Port Trust Employees (Classification, Control and Appeal) Regulations, 1968. Regulation 7 of these Regulations provides for suspension of an employee in contemplation or during pendency of an enquiry or against whom any criminal offence is under investigation, enquiry or trial or who, in the opinion of the competent authority, has engaged himself in activities prejudicial to the interest of the security of the State.

A conjoint reading of various sub-rules of Rule 54B reproduced above shows that when an employee who has been suspended is reinstated, the competent authority has to make a specific order regarding the pay and allowances to be paid to him for the period of suspension. Where the competent authority forms an opinion that the suspension of the employee was wholly unjustified, the latter becomes entitled to full pay and allowances for the period of suspension. In such a case, the period of suspension has to be treated as period spent on duty for all purposes. In other cases, the competent authority has to determine the amount of pay and allowances, which may be paid to the employee during the period of suspension. For this purpose, a notice is required to be given to the employee in terms of sub-rule 5.

In the present case, we find that the respondent had not been fully exonerated. Rather, the disciplinary authority had imposed penalty of reduction to the lower post. The Appellate Authority modified the penalty by directing that the punishment would remain operative for a period of one year. Therefore, appellant No.2 had the right to determine what amount of pay and allowances over and above what had already been paid to the respondent by way of subsistence allowance during the period of suspension, should be paid to him. This is precisely what the said appellant did when he directed that the respondent shall not be entitled to monetary benefits for the period of suspension and the subsistence allowance already paid to him shall be treated as proportionate pay.

In view of the above, we hold that the learned Single Judge committed an error by directing the appellants to pay full pay and allowances to the respondent. This appears to have happened because attention of the learned Single Judge was not drawn to the 1964 Regulations and Rule 54B.

Learned counsel for the respondent made a feeble attempt to argue that order dated 21.10.1991 was vitiated due to violation of the rules of natural justice because no notice or opportunity was given to his client, but we do not find any justification to entertain the same because the respondent did not take this plea in the writ petition and no such argument was advanced before the learned Single Judge.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside. As a consequence, the writ petition filed by the respondent shall stand dismissed.

As a sequel to disposal of the appeal, WAMP No.3226 of 2003 filed by the appellants is disposed of as infructuous.

G.S.SINGHVI, CJ

G.CHANDRAIAH.J.

18-12-2006

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